STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CA and AA, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARILYN DEAN ALLEN,

Respondent-Appellant,

and

QUINTINE EUGENE JOHNSON, a/k/a QUINTIN EUGENE JOHNSON,

Respondent.

UNPUBLISHED
May 27, 2003

No. 241986
Wayne Circuit Court
Family Division
LC No. 00-390571

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Marilyn Allen appeals as of right from a circuit court order terminating her parental rights to the minor children CA and AA pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Allen and Quintine Johnson are the parents of AA, born September 25, 1990 and CA, born December 5, 1991, as well as four other children. The FIA filed a neglect petition in 2000. At the July 2000 pretrial hearing, Allen admitted that in April, she was living in a home that was unfit for habitation because it lacked gas and water service and was infested with roaches. Allen had been offered remedial services but they were terminated. Johnson was incarcerated. Apparently the petition included all the children of Allen and Johnson, except one child who was in custody on criminal charges. Because this child was still a juvenile, he was added to the petition.

At a hearing on August 4, 2000, the trial court adjudicated AA and CA, as well as two other children, court wards based on Allen's admissions at the previous hearing. After taking testimony, the trial court dismissed the petition as to one child because he had disappeared. The trial court dismissed the petition as to another child because he was under its jurisdiction as a delinquent. The trial court established a treatment plan for Allen that included suitable housing, legal income, drug screens, parenting classes, visitation, and a family assessment at the Clinic for Child Study.

Apparently Allen did not make good progress on the treatment plan, because at a review hearing in November of 2000, the trial court asked her "to work on the treatment plan so that we can get some family reunification going. Court cannot keep this case open forever . . . . You have to commit or allow your relatives to plan for your children."

By the time of the second review hearing in January of 2001, there had been little progress. Angeleatta Dortch, the foster care worker, testified that Allen had missed most of the scheduled visits. Allen had not started parenting classes, apparently because of a problem with the agency, but had not sought assistance from Dortch. Allen also had not provided drug screens. The trial court again directed Allen to comply with the treatment plan and added, "This Court does not want to sever your relationship with those children, but the law says you only have a short period of time to show that you can get it together. You got about six months because next July if the children are not ready to be back in your home, I have to order the Family Independence Agency to file a permanent custody petition."

By the third review hearing in April of 2001, Allen had apparently begun making progress, although she still lacked housing and was not providing drug screens on a regular basis. The trial court authorized unsupervised day visits. At the July, 2001 permanency planning hearing, the FIA's counsel indicated that Allen was somewhat compliant with the treatment plan, but had yet to participate in counseling and obtain housing. Counsel requested additional time for Allen to work toward reunification. The trial court ordered Allen to participate in family counseling and to take the necessary steps for acquiring housing, stating, "Get a house, I'll give you back your kids."

Evidently, however, Allen failed to make any further progress. At a November 7, 2001 hearing, the trial court authorized the filing of a supplemental petition for termination, which was filed on January 10, 2002. The petition sought termination of Allen's parental rights to AA and CA because Allen had failed to make progress with the treatment plan. A trial court referee conducted the hearing on April 30, 2002. At the outset, the referee agreed to take judicial notice of all court orders and findings of fact in the case.

Dortch testified that she had been the foster care worker since November of 2000. According to Dortch, the previous worker, Donna McClain, had established a treatment plan for Allen in July of 2000. An updated plan was established every three months. The plan required Allen to participate in family and individual counseling, visit the children weekly, undergo a drug assessment and provide random weekly drug screens, obtain and maintain suitable housing and a legal source of income, complete parenting classes, maintain weekly contact with the foster care worker, and attend all court hearings.

Dortch testified that she gave Allen referrals for counseling to Family Services, Eastwood Community Clinic, Northeast Guidance Center, Children's Center, Community Mental Health, and Wayne County Catholic Services. However, Allen did not attend counseling and told Dortch "that she did not have Medicaid and I explained to her that she needed to go to a local FIA and sign up so that these services could be paid for but she never followed through. Another thing that I told mother about was the kids were in counseling at Family Services and it was okay for her to sit in on their counseling which would be family counseling and she didn't have to pay and she didn't comply with that also."

Dortch also testified that she gave Allen referrals to four different places for a drug assessment between January and March of 2001. According to Dortch, Allen attended one assessment in March of 2001. The evaluator reported that "there was no major problem from mother but they would like for mother to continue with the drug screens and that's what was ordered." Allen was to call in each day to find out if she was supposed to provide a screen; if she was, she had to respond within twenty-four hours. Dortch stated that after she took over the case in 2000, Allen was scheduled to provide six weekly screens; she provided none. In 2001, Allen was scheduled to provide forty-nine screens; she provided six. Allen gave no reason for missing the other forty-three. In 2002, Dortch switched to biweekly drug screens. Of the eight scheduled, Allen provided four. According to Dortch, "I would speak with mother and she would tell me that she was going to drop. She's never provided me with a reason why not."

Dortch stated that since she had been on the case, Allen had been living at the same address, with someone else. Dortch never assessed the suitability of the home because "it's reported that the house is a two bedroom, so there was no need for me to assess the home seeing that the mother has four children."

According to Dortch, Allen worked at the Salvation Army from July to November of 2001, but, apart from that, she had not been employed. Allen told Dortch that she had lined up a job with Comerica Park but had not yet been called in to work. Dortch knew of no other legal source of income for Allen. Allen was provided three referrals for parenting classes. She followed through and completed the classes on March 1, 2001.

Originally, Dortch testified, Allen had weekly supervised visitation at the agency. At one point, when the children were living with their paternal grandmother, Allen had unsupervised visits where she "could take them out into the community for a couple of hours. However, those visits were stopped because the mother took the kids out for a couple of days and didn't bring them back, so" supervised visitation was reinstated in August of 2001. Dortch observed several visits between Allen and the children and stated that Allen interacted appropriately with them. Unfortunately, however, Allen's attendance was irregular. Dortch stated that after she took over the case in 2000, six weekly visits were scheduled but Allen attended none of them. In 2001, forty-eight visits were scheduled but Allen only attended twenty-four. In 2002, fourteen visits were scheduled but Allen attended five and had excused absences for two others. On occasion, Allen claimed transportation difficulties for her failure to attend. For the rest of the time, she had no excuse. According to Dortch, the boys were disappointed when Allen failed to appear.

Dortch recommended that Allen's parental rights be terminated "due to the fact that mother has not complied with the parent/agency agreement." Dortch recommended placement in a family-based foster care home and then semi-independent living; the long-term plan was for

adoption. Dortch stated that she discussed the issue of termination with AA, who was opposed to it. CA "had no response." Both boys expressed an interest in continuing a relationship with one another and with their older siblings.

Allen testified that she went for a drug assessment as directed and no major drug problems were detected. Allen stated that she went for drug screens as directed and did not "recall missing any." According to her understanding, she only had to provide a drug screen if it was listed for a given day. Allen believed that if she wasn't required to provide a drug screen that day, she did not have to call. "So, I took it upon myself to call them when I'm not in the book, I go and drop on my own."

Allen said she did not attend individual counseling because she didn't have insurance. She did not sign up for Medicaid because "I have to get another I.D. with my own address on it" and she was planning to move. She had lived at her present address "about a year" and had never changed the address on her driver's license. She had no explanation for not taking the time to have her address changed on her driver's license. Allen stated that she deliberately did not sign up for Medicaid because she "didn't want to go back in the system." She claimed that she was never told that she needed Medicaid to cover the cost of individual counseling. Even if that were the case, she believed that counseling would not be covered. Allen had no explanation for failing to sit in on family counseling sessions.

Allen admitted that she didn't have suitable housing. According to Allen, for the past year, she had been living in a two-bedroom house with two other people and there really wasn't room for her. Before that, she had been living with another relative. She said she had looked at "about a thousand" places for herself, but could only afford the rental deposit on four or five places.

Allen said she had last worked at Nice Weather Fabricating sometime in 2002. She was employed there for six months. She saved enough money for a deposit on a rental home, but didn't rent a home. She admitted that she missed half the visits with the children because "sometimes I do have car problems or I don't have gas money to get there." However, she later said she hadn't even owned a car until about a year ago. She admitted that Dortch had offered her bus tickets, but said sometimes they "didn't arrive on time." Later, Allen testified that she did not "recall missing visits," but allowed that she may have missed three. She stated that she loved her children and had taken parenting classes. She noted the Department of Community Justice returned that one child, a delinquency ward, to her home.

At the conclusion of the proofs, the FIA sought termination due to Allen's noncompliance with the treatment plan. Counsel for Allen and the children argued that Allen had tried to comply with the treatment plan. Given that the older siblings remained court wards and no one was planning for immediate adoption of AA and CA, counsel argued that they should not be severed from their family.

After hearing arguments, the trial court put the case over so it could review the file and so that counsel for the children could interview them regarding their preferences. When the parties returned on May 8, 2002, counsel reported that he spoke to the boys on May 5, and they told him that "in the event they were offered the option to give their consent to an adoption, they would not give that consent."

The trial court rendered its decision on May 10, 2002. It found that there was "clear and convincing evidence based on the mother's lack of active participation with the treatment plan" to terminate her parental rights. The trial court stated that the primary consideration was whether termination was in the boys' best interests. The trial court continued:

> We have a boy who is ten and a half and another boy who is eleven and a half. They are getting up in age and they are not ready to be even presented for adoption at this time and Mr. Homeier did speak with them and the boys said they were not interested in adoption, but after the Court reviewed the file and saw how little the mother has done except for her visits with the children and the bonding with the children, the Court is left with a dilemma. Do we keep the children as temporary wards of the court until they are nineteen years old knowing that the mother will not be in a position to parent these children. . . . So, do we leave the children in a limbo like that or do we put the children in a position that at some point there may by some miracle be an adoptive home for them. This Court has seen it both ways . . . but I have seen miracles and I opt for a miracle and therefore the Court finds that it is in the best interest of the children that the Court allow the agencies to look for a permanent placement for them. We have a ten year old and an eleven year old. If I don't do it now, it can never be done. They'll be too old. They may be too old now, but they may not and so the Court is going to terminate the parental rights of . . . the mother . . . .

II. Standard Of Review

The family court may order termination upon finding that at least one statutory ground for termination has been proved by clear and convincing evidence.[1] The family court's finding that at least one statutory ground for termination has been proved by clear and convincing evidence is reviewed for clear error.[2] A finding of fact is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.[3]

III. The Trial Court's Decision

We conclude that the trial court did not clearly err in finding that at least one statutory ground for termination had been proved by clear and convincing evidence.[4] Although respondent made efforts to comply with the treatment plan, the evidence showed that she lacked suitable housing for herself, much less the children, and had done little during the twenty-one months of court intervention to rectify that situation. Further, the trial court's finding regarding

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[1] *In re IEM*, *supra* at 450.

[2] *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

[3] *In re Vasquez*, 199 Mich App 44, 51-52; 501 NW2d 231 (1993).

[4] *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

the children's best interests was not clearly erroneous.[5] Therefore, the trial court did not clearly err in terminating respondent's parental rights.[6]

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

[5] *In re Trejo Minors*, *supra* at 356-357; MCL 712A.19b(5).

[6] *In re Trejo Minors*, *supra* at 356-357.